

## Ecocide - El Río de Aguas

Here in this remote South Eastern corner of Spain, in this semi-arid / desert zone, we find the last oasis in Western Europe, I am living here in this Eco Village located in the oasis.



We are facing Ecocide. This is being caused by massive over-exploitation of the "aquifer" which supplies water to the oasis and to 35,000 hectares of Nature 2000, EU protected habitats.

### **The Problem**

The story spans four years. We have accessed the EU Parliament, the United Nations and the EU Commission. We have found that they are unable to help us despite their agreement that this critical situation exists. Effective action can only be instigated by the Administration who are responsible for this situation.

Cristina Alvarez Baquerizo, a prominent Spanish Environmental lawyer, who has written a book on "Rights for Nature" has taken our case. In April this year, 2018, we DEMANDED that the Administration follow legal directives for the protection of our environment or face due judicial process to be initiated by ourselves.

We "demanded" action guaranteeing the priority uses of consumption for populations and for the survival of the ecosystems, habitats, species and for the functions of ecological services dependent on the aquifer. The Administration replied with a 17 point plan in which they gave themselves another 18 months before taking any action.

We have "contested" that plan citing both International, European and Spanish law insisting on the use of "precautionary and preventative" measures inherent in law for the protection of our endangered environment. We are demanding that measures for the reduction of the exploitation of the aquifer are initiated immediately.

We are demanding that primary environmental services such as climate regulation, carbon fixation, soil fertility, pollination, filtration of contaminants, provision of clean water, flood control, recreation, aesthetic and spiritual values are included in a study of the aquifer. Ecosystem services enable the furtherance of the prosperity of human society, economy, health, social relations, freedoms and security. These demands lead us closer to the realization that we need to have legally enforceable rights to be given to Nature in order for both Humans and Nature to survive, thrive and prosper.

For those of you who would like to go deeper into the legal arguments that we are using, I have made the following summary of our "contestation" of the Administration's 17 point plan.

A huge THANK YOU to Cristina Alvarez Baquerizo.

TO THE GENERAL SECRETARIAT OF ENVIRONMENT AND CLIMATIC CHANGE OF THE COUNCIL OF ENVIRONMENT AND ORDINATION OF THE TERRITORY OF THE GOVERNMENT OF ANDALUSIA

This a SUMMARY of the appeal / response to the Resolution of June 13, 2018 which was published in the Official Gazette of the Junta de Andalucía number 128 on Wednesday, July 4, 2018

PREAMBLE

We note the absence of preventive measures in violation of the principle of prevention.

Most of the measures contained in the Resolution are mandatory by law, pending compliance, and should have been in place since 2009, refer to the PHCMA 2009-2015.

Measures contemplated in the "Ground of Law" of the Resolution, can be considered adequate or at least not harmful to the body of water - numbers 1,2, 4,5,7,8,9,10,11,12,13,14, and 17 - the remaining measures 3, 6, 15 and 16 are not adequate to Law or to the reality of this body of water.

On April 24, 2018, a proposal prepared by the Head of the Planning Office stated that "until the approval of a program of recovery measures, the Ministry responsible for water may agree the limitations of extraction as well as groundwater quality protection when measures are necessary as a preventive and precautionary measure ". This is stated in Article 54 of Water Law 9/2010 of July 30.

In the Resolution, the absence of preventive measures, provided for in Article 54 of Law 9/2010 of July 30 is unacceptable.

The proposal of April 24 clearly indicates the need for "reduction of at least 20% of the volume granted for the use of the water body".

Without immediately reducing extractions for agricultural uses, the Resolution does not actually contribute to its intended objective or to the achievement of water quality and quantity.

The annual available resources are 5.61 (hm<sup>3</sup> / year). The annual volume extracted for agricultural use is 21 hm<sup>3</sup>, producing an annual overexploitation of 302%.

The fact that the establishment of sustainability is to be met by 2027 is a further barrier to immediate action.

This is in violation of the Prevention / Precautionary Principle.

In Article 191 of the Treaty on the Functioning of the European Union, "The lack of scientific certainty should not be used as a reason to postpone measures aimed at preventing the deterioration of the environment".

The Rio de Janeiro Declaration, Principle 15 of the Declaration of Rio de Janeiro at the United Nations Environment and Development Summit relates to "risk" when there is a threat of irreversible serious damage to the Environment.

The principle has been used in the First and Third International Conference of the North Sea, between 1987 and 1990, in the Bamako Convention, Africa, on Transboundary Movements of Hazardous Wastes 1991, and in Conventions relating to the protection of the Baltic Sea, in the preamble to the Convention on Biological Diversity, Article 3.3 of the Framework Convention on Climate Change, Cartagena Protocol on Biosafety, adopted in Montreal in 2000 and in Article 5 of the Charter of the Environment of the French Republic.

The principle is one of the foundations of European Union Policy in the field of environmental protection stated in Article 3 of the Treaty of the European Union states that the field of application must be extended to the actions and policies of public administrations at the community level. The Court of Community Justice has made this principle a rule of law, for direct application.

Community jurisprudence United Kingdom / Commission of May 5, 1998, Case C 180/96 relating to "mad cow disease" declared that two elements / conditions must be identified as necessary to give rise to the application of the precautionary principle: first, the identification of the existence of a danger and secondly, its severity.

The degree of overexploitation of the mass of groundwater, Alta Aguas (060008) is a risk to human supply, and a risk to environmental survival.

The principle of prevention has been included in the Water Law of Andalusia. Article 5, stating that administrative actions should include, "prevention, conservation and restoration of the good ecological status of aquatic ecosystems with respect to their water needs and of the terrestrial ecosystems and wetlands directly dependent on those aquatic ecosystems.

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We consider it essential to adopt, immediately, preventive measures, formulated in the proposal of April 24 2018 to include, as a minimum, the reduction of 20% of the volume of water extracted from the body of water 060008 Alta Aguas.

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Below is a picture of some of the olive plantations.



Measures 3, 6, 15 and 16 are not adequate to Law or to the reality of this body of water.

#### Measure 3 of the Resolution

"Carrying out a study to obtain adequate knowledge of the "Agua" groundwater body and its relationship with the surface water bodies associated with it."

February 2, 2015 a request for such a study was made by Mr. Marcos Dieguez Vidal, of "Ecologists in Action" ..

September 14, 2017, the Parliamentary Group IU-Podemos urged the Government of Andalucía to act urgently, in collaboration and coordination with the Provincial Council to adopt solutions to prevent further deterioration in the state of the aquifer supplying Rio Aguas and to request a similar study to the aforementioned. A "Proposition of Law on actions for the environmental regeneration of the aquifer supplying the river Aguas (Almería)" was formulated.

Intensive olive groves irrigated from the aquifer are creating this deterioration in the condition of the aquifer. The PHCMA Report 2009-2015 contains paragraphs that summarize the situation.

"The territory is characterized by a strong aridity and very scarce natural resources. Irrigated agriculture is a very profitable activity that has led, not only to an excessive use of surface resources, but also to overexploitation of aquifers " .

"The current balance between demands and available resources makes it impossible, not only to serve new demands with conventional resources, but also to make policy oriented towards substitution by unconventional resources."

The proposed study needs to assess the relevance of super intensive olive production in relation to job creation and the sustainable development of the Andalusian agrarian economy.

This is a picture, taken today, of our semi arid zone.



It is essential to preserve the Ecosystem services which have consequences on the prosperity of human society, its economy, its health, social relations, freedoms and security. Ecosystem primary services must be protected. These are services such as climate regulation, carbon fixation, soil fertility, pollination, filtration of contaminants, provision of clean water, flood control, recreation and aesthetic and spiritual values.

In 2005 the UN created the "Millennium Ecosystem Assessment" to follow the above criteria.

The Government of Andalucía have developed a "first approach" and have used words that clearly identify our situation. "Overexploitation is linked to poor crop management and situations in which the consumption of ecoservices is much higher than the capacity of the ecosystem to replace them. Effects are the depletion of groundwater, the contamination of aquifers and surface water bodies, the loss of fertile soil and an intensification of erosion and desertification. Industrial agriculture is closely linked to overexploitation."

We believe it is essential to assess ecosystem services in the framework of the study that will be developed according to the Resolution Measure 3.

The consequent assessment and study will enable appropriate measures to be taken in regard to future irrigation and in the program of measures to be used to obtain sustainability by 2027.

The Public Administration, having failed to meet its obligations for many years, must establish a specific deadline for the setting up, preparation and production of the study.

#### Measure 6 of the Resolution

"With regard to the reduction of at least 20% of the volume granted for exploitations, the Territorial Delegation in Almería, with the collaboration that needs of the Subdirección of Management of the Hydraulic Public Domain in Malaga, will proceed to the opening of the

proceeding of hearing foreseen in the article 82 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, to the holders of water rights and to the interested groups, in order to be able to adopt the corresponding resolution under article 54.1.b .2.º of the Water Law of Andalusia that is accurate to preserve the general interests.”

The 20% reduction contained in the proposal must be established as a preventive measure immediately while the Recovery Measures Program is being prepared. The 20% reduction will then be included in the Program of recovery measures that must be submitted to a public hearing.

Article 82 of Royal Legislative Decree 1/2001, of July 20, and Law 19/2013, of December 9 allows for this as does , the LAA, containing similar provisions in articles 36.2 and 51.3. also, Article 54 of the Water Law of Andalusia.

July 25, 2017 without any hearing, the Administration limited extractions from the underground water body 060,013 Campo de Dalías-Sierra de Gador,

In our case, the administration has recommended a reduction of extractions (20%), however, the acting administration departs from its previous criterion, without any motivation.

The duty of motivation of the Public Administrations is connected with the right of citizens to a good Administration, which is inherent to the common constitutional traditions of the Member States of the European Union, included in Article 41 of the Charter of Fundamental Rights of the European Union, proclaimed by the Council of Nice of 8/10 December 2000, stating that this right includes in particular the obligation incumbent upon the Administration.

In addition to violating the principle of prevention or precaution, the failure to adopt the recommendation to reduce the use of 20% violates current regulations and violates the right to good administration and good governance.

This picture I have taken inside the 2000 year old Roman built tunnel to bring water to our village. You can see the drop in water levels.



#### Measure number 15 of the Resolution.

Temporary authorizations for extractions superior to available resources: "Exceptionally, extractions greater than the available resources of the groundwater body may be authorized temporarily, when compliance with the environmental objectives is guaranteed in accordance with article 54.4 of Law 9/2010, of July 30, of Andalusia."

This is inadmissible. There is no Community of users, the program of measures has not been drafted, the management body has not been created, non-compliance with environmental objectives has been extended to 2027, thus nullifying this measure.

There is an absence of any regulatory decisions so, there is no procedure that regulates temporary and exceptional authorizations until linked to the final approval of the program of measures which do not exist.

#### Measure number 16 of the Resolution.

Exceptional situations of Article 58 of the Water Law.

Article 56 of the TRLA section four of article one of Law 11/2012 of December 19, "Urgent measures in the field of the environment" says: 3. The action program will contemplate the conditions in which the established limitations can be temporarily overcome, allowing extractions superior to the available resources of a groundwater body when the fulfillment of the environmental objectives is guaranteed.

Environmental objectives are the reason for the resolution, therefore this clause is invalid.

#### LEGAL BASIS

Based on the provisions in Article 56 of the LPACAAPP and the proposal of April 24th, 2018 we expressly request that extraction of water from the aquifer is immediately reduced by a minimum of 20%. adoption of the extraction reduction measure of 20% of the granted volume

Nullifying of paragraphs 3, 6, 15 and 16 of the Resolution - Article 47 of the LPACAAPP, -Ley 39/2015, of October 1, Administrative Procedure and Public Administrations -, section 1, f), inasmuch as they allow, for an indefinite date, and in violation of Community, state and regional water legislation, the continuity of an exploitation of the groundwater without meeting legal requirements, and in violation of Article 48 of the LPACAAPP

In addition, section 6 of the Resolution is particularly affected by nullity due to lack of motivation according to Article 35 of the LPAC AAPP

TO THE GENERAL SECRETARIAT OF ENVIRONMENT AND CLIMATIC CHANGE OF THE COUNCIL OF ENVIRONMENT AND ORDINATION OF THE TERRITORY OF THE GOVERNMENT OF ANDALUSIA

We Request

That prior to proceedings in law you proceed to nullify paragraphs 3, 6, 15 and 16 of the Resolution of June 13, 2018 and reformulate the Resolution in the manner indicated in this document.

Establish the preventive measure already recommended in the proposal of April 24 of the head of the planning office to reduce agricultural use by 20% whilst formulating a program of recovery measures.

Establish a time-line for the realization of the study mentioned in section 3, and detail and expand its content so that it contains a socio-economic assessment of the area which is under irrigation for extensive olive plantations that are dependent on this aquifer. Create an assessment of the environmental services of the ecosystems under these extensive olive plantations.

Eliminate paragraphs 15 and 16 as invalid.

Signed

In Sorbas, Almería, on July 30, 2018